

APPEAL AGAINST REFUSAL BY COUNCIL TO RELAX REQUIREMENT B1 (MEANS OF WARNING AND ESCAPE) IN PART B (FIRE SAFETY) OF SCHEDULE 1 TO THE BUILDING REGULATIONS 2000 (AS AMENDED), IN RESPECT OF BUILDING WORK TO CONVERT THREE TWO-STOREY MAISONNETTES INTO TEN FLATS

The building work and appeal

3. The papers submitted indicate that prior to the building work in question commencing, the site consisted of a row of two-storey maisonnettes accessed off a walkway, which also forms the separating structure (reinforced concrete slab) between the ground floor shops below facing onto ...Street and affords a minimum of two hours fire resistance. The walkway is accessed via two external stairways leading down into ...Road and a third external covered stairway leading down to ...Street.

4. The building work, which you indicate has commenced, consists of the conversion and extension of three of the existing two-storey maisonnettes, including the construction of a new pitched roof, and building over part of the walkway to form flats. The total development will provide ten flats, two of which will be within the new roof structure. The flats will be accessed off a single stairway rising two floors above the walkway.

5. The papers indicate that the above building work was the subject of full plans applications, including resubmissions, deposited with the Council which were not approved for a number of reasons, including because the Council took the view that the proposed means of escape from the building in question is inadequate and does not comply with Requirement B1 (Means of warning and escape) of the Building Regulations.

6. As you consider that the Council has been too restrictive in its interpretation of the current guidance in paragraph 2.31 of Approved Document B (Fire safety, Volume 2 - Buildings other than dwellinghouses – hereafter referred to as “AD B”) and that the building work provides a safe means of escape, you applied for a relaxation of Requirement B1 and the relevant guidance in AD B. The Council responded in its letter of 24 September 2009 explaining that the relaxation procedure relates solely to the functional requirements of the Building Regulations and why it is neither necessary nor logical to relax the guidance in AD B. The Council also refused your application relating to Requirement B1 based on the opinion explained in paragraphs 9 and 10 below. It is against this refusal that you have appealed to the Secretary of State.

The appellant’s case

7. You make the following points in the statement attached to your letter of 20 October 2009 in support of your appeal:

- (i) The exit from the stairway from the new flats is proposed onto the walkway from which there are three alternative exits all in open air. Of the three alternative exits, two of any of them are at right angles to each other, and in your opinion this gives a safe means of escape in the event of fire.
- (ii) The Council believes your proposals contravene paragraph 2.31 of AD B in that the walkway is also a roof to the shops. You are of the opinion that the separating structure which forms the walkway should not be considered as a 'roof' in the application of paragraph 2.31.
- (iii) The walkway, which is some 5m wide, effectively is a street at first floor level. In this manner it is similar to many town centre developments which have a raised access floor over secondary accommodation. This structure will also form a compartment floor between the flats and the shops and has a minimum of a two-hour fire protection. You question if it is good enough to act as a floor to a flat why it cannot be used as a means of escape.
- (iv) As stated above, exiting the stairway from the flats onto the walkway will be in open air and there are three alternative routes from that point to street level. There is therefore very little difference between the safety of accessing at the point of the walkway than there would be if it were the street level itself. You point out that this same walkway acts as the sole means of access to a further number of existing maisonettes.

8. In response to the Council's comments to the Secretary of State stated below, you also made representations in your letters of 25 January and 4 March 2010 in which you provided further details supporting and reiterating the main points of your case. This included an explanation of how the buildings on the site and the "reinforced concrete structure" between the new flats and the ground floor shops were constructed and that the latter has been deemed acceptable for building control purposes. You added that:

- (i) Prior to the work comprising the conversion and extension for the flats, the three maisonettes on the same site utilised the same means of escape as proposed.
- (ii) In your view, the problem arises from a reasonable definition of the word 'roof' in paragraph 2.31 of AD B which you contend relates to more conventional roof construction, i.e. a relatively light construction with little fire resistance, and that a 'walkway' would be a more appropriate terminology in such circumstances.
- (iii) The fact that part of the walkway forming the escape routes and the shops under the flats are not part of your client's property is irrelevant as documentary evidence has been given to the Council proving that there are rights of way for access and emergency exit purposes along the walkway to all the stairways.

- (iv) Although you have appealed against the Council's refusal of your application to relax Requirement B1, you conclude that the design in this case complies with the requirement in that it provides a safe and appropriate means of escape from fire.

The Council's case

9. The Council made an assessment of the overall level of safety offered by your alternative proposal, in comparison with the "conventional solutions" in the guidance in AD B. As detailed in the Council's letter of 21 January 2010, along with the schedule of comments provided in response to your full plans applications, the Council is of the opinion that the proposal does not satisfy Requirement B1 essentially because:

- (i) escape over a flat roof is only acceptable if more than one escape route is available from a storey; and
- (ii) where escape over a flat roof is provided, the roof shall be part of the same building from which escape is being made.

10. The Council also considers that there are no extenuating circumstances which would justify relaxing Requirement B1.

The Secretary of State's consideration

11. The Secretary of State has given careful consideration to the particular circumstances of this case and the arguments presented by both parties. He notes that he has been asked to consider an appeal with regards to Requirement B1 of the Building Regulations in respect of the means of escape from a residential development which forms part of an existing access, and that this access also forms the separation from the shops below.

12. The Secretary of State takes the view that the fundamental issue in this case is whether or not it is acceptable for the proposed route from the final exit of the newly formed flats to be via the walkway that also serves the function of a roof for the shops below. In considering this appeal the primary concern of the Secretary of State is the safety of the occupants of the flats who may need to use the means of escape in an emergency situation and as to whether it is reasonable to consider that the means of escape satisfies the functional requirements of the Building Regulations.

13. You have appealed against the Council's decision to refuse your application to relax Requirement B1 in this case, but argue conversely that the proposed means of escape provisions satisfy the requirement. The Council argues that as paragraph 2.31 of AD B states "If more than one escape route is available from a storey, or part of building, one of those routes may be by way of a flat roof....", this implies that a single escape route is unacceptable over a flat roof. You state that the exit from the stairway from the flats is proposed onto the walkway from which there are three alternative exits all in open air. However, the Council also argues that the building only has one escape route as the alternative routes are not available until the roof has been accessed; therefore the alternatives are dependant on the integrity of the same flat roof.

14. The Secretary of State recognises that in this case the separating structure between the new flats and the shops below also forms a roof to the shops. He also notes that the structure not only provides access as a walkway to the flats, but also to the existing arrangement of maisonettes.

15. Escape routes across roofs are generally undesirable as they can become impassable through lack of proper maintenance or obstruction by inclement weather. Similarly, there can be problems where the owner of a building prevents safe use of a route from another building for reasons of security, although you say there will be rights of way in this case for access and emergency purposes. Notwithstanding this, where the only route to and from a building (or part of a building) is via a roof, or podium, then the Secretary of State considers that it is reasonable to assume that such a route will be kept clear. This is a principle that is reflected in the guidance in paragraph 2.48 of AD B and there are clear parallels with the circumstances of this case.

16. The Secretary of State notes that the Council has raised no issue with Requirement B3 (Internal fire spread (structure)) of the Building Regulations in this case. The Council appears to be content with the separating structure between the flats and the shops, but is not content for the occupants of the flats to escape over the same structure leading to the external stairways.

17. Given that the walkway/roof provides the only access to the new flats and that it is adequately protected from the effects of a fire in the shops, it is the Secretary of State's opinion that it would be reasonable to accept it as part of the means of escape which would therefore comply with Requirement B1. In such circumstances, he does not consider it necessary to give further consideration to whether a relaxation of the requirement is justified.

The Secretary of State's decision

18. The Secretary of State considers that compliance with Requirement B1 is a life safety matter and, as such, he would not normally consider it appropriate to either relax or dispense with it, except in exceptional circumstances which do not apply in this case. Moreover, as indicated in paragraph 17 above, it is his opinion that the building work in question demonstrates compliance with Requirement B1 in relation to the proposed means of escape by way of the walkway/roof. The Secretary of State has therefore concluded that it would not be necessary nor

appropriate to relax Requirement B1 (Means of warning and escape) in Part B (Fire safety) of Schedule 1 to the Building Regulations 2000 (as amended), in this case. Accordingly, he dismisses your appeal.

19. You should note that in the application of building regulations to the building work, it is relevant when that work begins. Where the work which as in your case is the subject of full plans deposited with the Council before 1 October 2010 and is started before 1 October 2011, the Building Regulations 2000 (as amended) will apply (i.e. not the successor Building Regulations 2010) and the Secretary of State has made his appeal decision on this basis.

20. You should also note that the Secretary of State has no further jurisdiction in this case and that any matters that follow should be taken up with the building control body.